



Reprinted  
April 8, 2003

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## ENGROSSED HOUSE BILL No. 1849

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DIGEST OF HB 1849 (Updated April 7, 2003 3:36 PM - DI 105)

**Citations Affected:** IC 3-7; IC 33-4; IC 35-35; IC 35-38; IC 35-41; IC 35-47; noncode.

**Synopsis:** Possession of firearm by domestic batterer. Provides that a person convicted of a crime of domestic violence may not possess a firearm even after the person's right to vote or right to serve on a jury has been restored. Permits a person to have the right to possess a firearm restored: (1) after the expiration of a five-year period; or (2) if the underlying domestic violence conviction is reversed on appeal or on post-conviction review.

**Effective:** July 1, 2003.

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### Lawson L, Budak, Mays

(SENATE SPONSORS — LONG, BRODEN, CRAYCRAFT)

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January 23, 2003, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

February 25, 2003, amended, reported — Do Pass.

March 3, 2003, read second time, ordered engrossed. Engrossed.

March 4, 2003, read third time, passed. Yeas 98, nays 0.

#### SENATE ACTION

March 13, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

April 3, 2003, amended, reported favorably — Do Pass.

April 7, 2003, read second time, amended, ordered engrossed.

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EH 1849—LS 7279/DI 106+



Reprinted  
April 8, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1849

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A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 3-7-13-5 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A person described in section  
3 4 of this chapter who is otherwise qualified to register under this article  
4 is eligible to register when the person is no longer:

5 (1) imprisoned; or

6 (2) otherwise subject to lawful detention.

7 (b) Notwithstanding IC 35-47-2, IC 35-47-2.5, or the restoration  
8 of the right to vote under this section and except as provided in  
9 subsections (c), (d), and (g), a person who has been convicted of a  
10 crime of domestic violence (as defined in IC 35-41-1-6.3) may not  
11 possess a firearm upon the person's release from imprisonment or  
12 lawful detention.

13 (c) Not earlier than five (5) years after the date of conviction, a  
14 person who has been convicted of a crime of domestic violence (as  
15 defined in IC 35-41-1-6.3) may petition the court for restoration of  
16 the person's right to possess a firearm. In determining whether to  
17 restore the person's right to possess a firearm, the court shall

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consider the following factors:

(1) Whether the person has been subject to:

(A) a protective order;

(B) a no contact order;

(C) a workplace violence restraining order; or

(D) any other court order that prohibits the person from possessing a firearm.

(2) Whether the person has successfully completed a substance abuse program, if applicable.

(3) Whether the person has successfully completed a parenting class, if applicable.

(4) Whether the person still presents a threat to the victim of the crime.

(5) Whether there is any other reason why the person should not possess a firearm, including whether the person failed to complete a specified condition under subsection (d) or whether the person has committed a subsequent offense.

(d) The court may condition the restoration of a person's right to possess a firearm upon the person's completion of specified conditions.

(e) If the court denies a petition for restoration of the right to possess a firearm, the person may not file a second or subsequent petition until one (1) year has elapsed.

(f) A person has not been convicted of a crime of domestic violence for purposes of subsection (c) if the conviction has been expunged or if the person has been pardoned.

(g) The right to possess a firearm shall be restored to a person whose conviction is reversed on appeal or on post-conviction review at the earlier of the following:

(1) At the time the prosecuting attorney states on the record that the charges that gave rise to the conviction will not be refiled.

(2) Ninety (90) days after the final disposition of the appeal or the post-conviction proceeding.

SECTION 2. IC 33-4-5-7, AS AMENDED BY SEA 257-2003, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) A person shall be excused from acting as a juror if the person:

(1) is over sixty-five (65) years of age;

(2) is a member in active service of the armed forces of the United States;

(3) is an elected or appointed official of the executive, legislative,

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or judicial branches of government of:

(A) the United States;

(B) Indiana; or

(C) a unit of local government;

who is actively engaged in the performance of the person's official duties;

(4) is a member of the general assembly who makes the request to be excused before being sworn as a juror;

(5) is an honorary military staff officer appointed by the governor under IC 10-16-2-5;

(6) is an officer or enlisted person of the guard reserve forces authorized by the governor under IC 10-16-8;

(7) is a veterinarian licensed under IC 15-5-1.1;

(8) is serving as a member of the board of school commissioners of the city of Indianapolis under IC 20-3-11-2;

(9) is a dentist licensed under IC 25-14-1;

(10) is a member of a police or fire department or company under IC 36-8-3 or IC 36-8-12; or

(11) would serve as a juror during a criminal trial and the person is:

(A) an employee of the department of correction whose duties require contact with inmates confined in a department of correction facility; or

(B) the spouse or child of a person described in clause (A);

and desires to be excused for that reason.

(b) A prospective juror is disqualified to serve on a jury if any of the following conditions exist:

(1) The person is not a citizen of the United States, at least eighteen (18) years of age, and a resident of the county.

(2) The person is unable to read, speak, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily a juror qualification form.

(3) The person is incapable of rendering satisfactory jury service due to physical or mental disability. However, a person claiming this disqualification may be required to submit a physician's or authorized Christian Science practitioner's certificate confirming the disability, and the certifying physician or practitioner is then subject to inquiry by the court at the court's discretion.

(4) The person is under a sentence imposed for an offense.

(5) A guardian has been appointed for the person under IC 29-3 because the person has a mental incapacity.

(6) The person has had rights revoked by reason of a felony

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conviction and the rights have not been restored.

(c) A person may not serve as a petit juror in any county if the person served as a petit juror in the same county within the previous three hundred sixty-five (365) days. The fact that a person's selection as a juror would violate this subsection is sufficient cause for challenge.

(d) A grand jury, a petit jury, or an individual juror drawn for service in one (1) court may serve in another court of the county, in accordance with orders entered on the record in each of the courts.

(e) The same petit jurors may be used in civil cases and in criminal cases.

(f) A person may not be excluded from jury service on account of race, color, religion, sex, national origin, or economic status.

**(g) Notwithstanding IC 35-47-2, IC 35-47-2.5, or the restoration of the right to serve on a jury under this section and except as provided in subsections (c), (d), and (l), a person who has been convicted of a crime of domestic violence (as defined in IC 35-41-1-6.3) may not possess a firearm:**

**(1) after the person is no longer under a sentence imposed for an offense; or**

**(2) after the person has had the person's rights restored following a conviction.**

**(h) Not earlier than five (5) years after the date of conviction, a person who has been convicted of a crime of domestic violence (as defined in IC 35-41-1-6.3) may petition the court for restoration of the person's right to possess a firearm. In determining whether to restore the person's right to possess a firearm, the court shall consider the following factors:**

**(1) Whether the person has been subject to:**

**(A) a protective order;**

**(B) a no contact order;**

**(C) a workplace violence restraining order; or**

**(D) any other court order that prohibits the person from possessing a firearm.**

**(2) Whether the person has successfully completed a substance abuse program, if applicable.**

**(3) Whether the person has successfully completed a parenting class, if applicable.**

**(4) Whether the person still presents a threat to the victim of the crime.**

**(5) Whether there is any other reason why the person should not possess a firearm, including whether the person failed to**

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complete a specified condition under subsection (d) or whether the person has committed a subsequent offense.

(i) The court may condition the restoration of a person's right to possess a firearm upon the person's completion of specified conditions.

(j) If the court denies a petition for restoration of the right to possess a firearm, the person may not file a second or subsequent petition until one (1) year has elapsed.

(k) A person has not been convicted of a crime of domestic violence for purposes of subsection (h) if the conviction has been expunged or if the person has been pardoned.

(l) The right to possess a firearm shall be restored to a person whose conviction is reversed on appeal or on post-conviction review at the earlier of the following:

(1) At the time the prosecuting attorney states on the record that the charges that gave rise to the conviction will not be refiled.

(2) Ninety (90) days after the final disposition of the appeal or the post-conviction proceeding.

SECTION 3. IC 35-35-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the defendant:

(1) understands the nature of the charge against him;

(2) has been informed that by his plea he waives his rights to:

(A) a public and speedy trial by jury;

(B) confront and cross-examine the witnesses against him;

(C) have compulsory process for obtaining witnesses in his favor; and

(D) require the state to prove his guilt beyond a reasonable doubt at a trial at which the defendant may not be compelled to testify against himself;

(3) has been informed of the maximum possible sentence and minimum sentence for the crime charged and any possible increased sentence by reason of the fact of a prior conviction or convictions, and any possibility of the imposition of consecutive sentences; and

(4) has been informed that the person will lose the right to possess a firearm if the person is convicted of a crime of domestic violence (IC 35-41-1-6.3); and

(5) has been informed that if:

(A) there is a plea agreement as defined by IC 35-35-3-1; and

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- 1 (B) the court accepts the plea;  
 2 the court is bound by the terms of the plea agreement.  
 3 (b) A defendant in a misdemeanor case may waive the rights under  
 4 subsection (a) by signing a written waiver.  
 5 (c) Any variance from the requirements of this section that does not  
 6 violate a constitutional right of the defendant is not a basis for setting  
 7 aside a plea of guilty.  
 8 SECTION 4. IC 35-38-1-7.7 IS ADDED TO THE INDIANA CODE  
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 10 1, 2003]: **Sec. 7.7. (a) At the time of sentencing, a court shall**  
 11 **determine whether a person has committed a crime of domestic**  
 12 **violence (as defined in IC 35-41-1-6.3).**  
 13 **(b) A determination under subsection (a) must be based upon:**  
 14 **(1) evidence introduced at trial; or**  
 15 **(2) a factual basis provided as part of a guilty plea.**  
 16 **(c) Upon determining that a defendant has committed a crime**  
 17 **of domestic violence, a court shall advise the defendant of the**  
 18 **consequences of this finding.**  
 19 **(d) A judge shall record a determination that a defendant has**  
 20 **committed a crime of domestic violence on a form prepared by the**  
 21 **division of state court administration.**  
 22 SECTION 5. IC 35-41-1-6.3 IS ADDED TO THE INDIANA CODE  
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 24 1, 2003]: **Sec. 6.3. "Crime of domestic violence," for purposes of**  
 25 **IC 3-7-13-5 and IC 33-4-5-7, means an offense or the attempt to**  
 26 **commit an offense that:**  
 27 **(1) has as an element the:**  
 28 **(A) use of physical force; or**  
 29 **(B) threatened use of a deadly weapon; and**  
 30 **(2) is committed against a:**  
 31 **(A) current or former spouse, parent, or guardian of the**  
 32 **defendant;**  
 33 **(B) person with whom the defendant shared a child in**  
 34 **common;**  
 35 **(C) person who was cohabiting with or had cohabited with**  
 36 **the defendant as a spouse, parent, or guardian; or**  
 37 **(D) person who was or had been similarly situated to a**  
 38 **spouse, parent, or guardian of the defendant.**  
 39 SECTION 6. IC 35-47-2-1 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1. (a) Except as**  
 41 **provided in subsection (b) and section 2 of this chapter, a person shall**  
 42 **not carry a handgun in any vehicle or on or about his person the**

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1 person's body, except in ~~his~~ the person's dwelling, on ~~his~~ the  
 2 person's property or fixed place of business, without a license issued  
 3 under this chapter being in ~~his~~ the person's possession.

4 (b) Unless the person's right to possess a firearm has been  
 5 restored under IC 3-7-13-5 or IC 33-4-5-7, a person who has been  
 6 convicted of domestic battery under IC 35-42-2-1.3 may not possess  
 7 or carry a handgun in any vehicle or on or about the person's body  
 8 in the person's dwelling or on the person's property or fixed place  
 9 of business.

10 SECTION 7. IC 35-47-4-6 IS ADDED TO THE INDIANA CODE  
 11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 12 1, 2003]: Sec. 6. (a) A person who has been convicted of domestic  
 13 battery under IC 35-42-2-1.3 and who knowingly or intentionally  
 14 possesses a firearm commits unlawful possession of a firearm by a  
 15 domestic batterer, a Class A misdemeanor.

16 (b) It is a defense to a prosecution under this section that the  
 17 person's right to possess a firearm has been restored under  
 18 IC 3-7-13-5 or IC 33-4-5-7.

19 SECTION 8. [EFFECTIVE JULY 1, 2003] IC 35-47-4-6, as added  
 20 by this act, applies only to crimes committed after June 30, 2003.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred House Bill 1849, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 29, delete "a crime involving" and insert "**domestic battery under IC 35-42-2-1.3**".

Page 3, line 30, delete "domestic battery (as defined in IC 5-26.5-1-3)".

Page 3, line 36, delete "a crime" and insert "**domestic battery under IC 35-42-2-1.3 and**".

Page 3, line 37, delete "involving domestic battery (as defined in IC 5-26.5-1-3)".

and when so amended that said bill do pass.

(Reference is to HB 1849 as introduced.)

LYTLE, Chair

Committee Vote: yeas 14, nays 0.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred House Bill No. 1849, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 8, delete "section," and insert **"section and except as provided in subsections (c) and (d),"**.

Page 1, line 9, delete "involving" and insert **"of"**.

Page 1, line 10, delete "IC 5-26.5-1-3)" and insert **"IC 35-41-1-6.3)"**.

Page 1, between lines 11 and 12, begin a new paragraph and insert:

**"(c) Not earlier than five (5) years after the date of conviction, a person who has been convicted of a crime of domestic violence (as defined in IC 35-41-1-6.3) may petition the court for restoration of the person's right to possess a firearm. In determining whether to restore the person's right to possess a firearm, the court shall consider the following factors:**

**(1) Whether the person has been subject to:**

**(A) a protective order;**

**(B) a no contact order;**

**(C) a workplace violence restraining order; or**

**(D) any other court order that prohibits the person from possessing a firearm.**

**(2) Whether the person has successfully completed a substance abuse program, if applicable.**

**(3) Whether the person has successfully completed a parenting class, if applicable.**

**(4) Whether the person still presents a threat to the victim of the crime.**

**(5) Whether there is any other reason why the person should not possess a firearm.**

**(d) The court may condition the restoration of a person's right to possess a firearm upon the person's completion of specified conditions.**

**(e) If the court denies a petition for restoration of the right to possess a firearm, the person may not file a second or subsequent petition until one (1) year has elapsed.**

**(f) A person has not been convicted of a crime of domestic violence for purposes of subsection (c) if the conviction has been reversed, vacated, set aside, or expunged or if the person has been pardoned."**

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Page 1, line 12, after "IC 33-4-5-7" insert ", AS AMENDED BY SEA 257-2003, SECTION 79,".

Page 2, line 10, delete "IC 10-2-1-5;" and insert "IC 10-16-2-5;".

Page 2, line 12, delete "IC 10-2-8;" and insert "IC 10-16-8;".

Page 3, line 15, delete "section," and insert "**section and except as provided in subsections (c) and (d),**".

Page 3, line 16, delete "involving" and insert "**of**".

Page 3, line 17, delete "IC 5-26.5-1-3)" and insert "**IC 35-41-1-6.3)**".

Page 3, between lines 21 and 22, begin a new paragraph and insert:

**"(h) Not earlier than five (5) years after the date of conviction, a person who has been convicted of a crime of domestic violence (as defined in IC 35-41-1-6.3) may petition the court for restoration of the person's right to possess a firearm. In determining whether to restore the person's right to possess a firearm, the court shall consider the following factors:**

**(1) Whether the person has been subject to:**

**(A) a protective order;**

**(B) a no contact order;**

**(C) a workplace violence restraining order; or**

**(D) any other court order that prohibits the person from possessing a firearm.**

**(2) Whether the person has successfully completed a substance abuse program, if applicable.**

**(3) Whether the person has successfully completed a parenting class, if applicable.**

**(4) Whether the person still presents a threat to the victim of the crime.**

**(5) Whether there is any other reason why the person should not possess a firearm.**

**(i) The court may condition the restoration of a person's right to possess a firearm upon the person's completion of specified conditions.**

**(j) If the court denies a petition for restoration of the right to possess a firearm, the person may not file a second or subsequent petition until one (1) year has elapsed.**

**(k) A person has not been convicted of a crime of domestic violence for purposes of subsection (h) if the conviction has been reversed, vacated, set aside, or expunged or if the person has been pardoned.**

SECTION 3. IC 35-41-1-6.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2003]: **Sec. 6.3. "Crime of domestic violence," for purposes of IC 3-7-13-5 and IC 33-4-5-7, means an offense or the attempt to commit an offense that:**

- (1) has as an element the:**
  - (A) use of physical force; or**
  - (B) threatened use of a deadly weapon; and**
- (2) is committed against a:**
  - (A) current or former spouse, parent, or guardian of the defendant;**
  - (B) person with whom the defendant shared a child in common;**
  - (C) person who was cohabiting with or had cohabited with the defendant as a spouse, parent, or guardian; or**
  - (D) person who was or had been similarly situated to a spouse, parent, or guardian of the defendant."**

Page 3, line 29, delete "A" and insert **"Unless the person's right to possess a firearm has been restored under IC 3-7-13-5 or IC 33-4-5-7, a"**.

Page 3, line 35, after "Sec. 6." insert **"(a)"**.

Page 3, after line 38, begin a new paragraph and insert:

**"(b) It is a defense to a prosecution under this section that the person's right to possess a firearm has been restored under IC 3-7-13-5 or IC 33-4-5-7.**

**SECTION 6. [EFFECTIVE JULY 1, 2003] IC 35-47-4-6, as added by this act, applies only to crimes committed after June 30, 2003."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1849 as printed February 26, 2003.)

LONG, Chairperson

Committee Vote: Yeas 6, Nays 3.



## SENATE MOTION

Mr. President: I move that Senator Craycraft be added as cosponsor of Engrossed House Bill 1849.

LONG

## SENATE MOTION

Mr. President: I move that Engrossed House Bill 1849 be amended to read as follows:

Page 1, line 9, after "(c)" insert ",".

Page 1, line 9, delete "and".

Page 1, line 9, after "(d)," insert "**and (g),**".

Page 2, line 14, after "firearm" insert ", **including whether the person failed to complete a specified condition under subsection (d) or whether the person has committed a subsequent offense**".

Page 2, line 23, delete "reversed, vacated, set aside, or".

Page 2, between lines 24 and 25, begin a new paragraph and insert:  
**"(g) The right to possess a firearm shall be restored to a person whose conviction is reversed on appeal or on post-conviction review at the earlier of the following:**

**(1) At the time the prosecuting attorney states on the record that the charges that gave rise to the conviction will not be refiled.**

**(2) Ninety (90) days after the final disposition of the appeal or the post-conviction proceeding."**

Page 4, line 6, after "(c)" insert ",".

Page 4, line 6, delete "and".

Page 4, line 6, after "(d)," insert "**and (l),**".

Page 4, line 32, after "firearm" insert ", **including whether the person failed to complete a specified condition under subsection (d) or whether the person has committed a subsequent offense**".

Page 4, line 41, delete "reversed, vacated, set aside, or".

Page 4, after line 42, begin a new paragraph and insert:

**"(l) The right to possess a firearm shall be restored to a person whose conviction is reversed on appeal or on post-conviction review at the earlier of the following:**

**(1) At the time the prosecuting attorney states on the record that the charges that gave rise to the conviction will not be refiled.**

**(2) Ninety (90) days after the final disposition of the appeal or**

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**the post-conviction proceeding.**

SECTION 3. IC 35-35-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the defendant:

- (1) understands the nature of the charge against him;
- (2) has been informed that by his plea he waives his rights to:
  - (A) a public and speedy trial by jury;
  - (B) confront and cross-examine the witnesses against him;
  - (C) have compulsory process for obtaining witnesses in his favor; and
  - (D) require the state to prove his guilt beyond a reasonable doubt at a trial at which the defendant may not be compelled to testify against himself;
- (3) has been informed of the maximum possible sentence and minimum sentence for the crime charged and any possible increased sentence by reason of the fact of a prior conviction or convictions, and any possibility of the imposition of consecutive sentences; ~~and~~
- (4) has been informed that the person will lose the right to possess a firearm if the person is convicted of a crime of domestic violence (IC 35-41-1-6.3); and**
- (5) has been informed that if:**
  - (A) there is a plea agreement as defined by IC 35-35-3-1; and
  - (B) the court accepts the plea;
 the court is bound by the terms of the plea agreement.
- (b) A defendant in a misdemeanor case may waive the rights under subsection (a) by signing a written waiver.
- (c) Any variance from the requirements of this section that does not violate a constitutional right of the defendant is not a basis for setting aside a plea of guilty.

SECTION 4. IC 35-38-1-7.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 7.7. (a) At the time of sentencing, a court shall determine whether a person has committed a crime of domestic violence (as defined in IC 35-41-1-6.3).**

**(b) A determination under subsection (a) must be based upon:**

- (1) evidence introduced at trial; or**
- (2) a factual basis provided as part of a guilty plea.**

**(c) Upon determining that a defendant has committed a crime of domestic violence, a court shall advise the defendant of the consequences of this finding.**



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**(d) A judge shall record a determination that a defendant has committed a crime of domestic violence on a form prepared by the division of state court administration."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1849 as printed April 4, 2003.)

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